The Making of Modern Scholarship of Commercial Law in Nineteenth- and Twentieth-Century Finland : Models and Adaptations

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I. The Growth of Commercial Law as a Discipline: International Models

The identity of commercial law has always been unclear. What legal institutions or bundles of norms actually belong to it? How should commercial law be distinguished from other fields of private law? And not only private law, for commercial law is one of the branches of law most difficult to place within the dichotomy of private and public law. Pollock and Maitland, then, identified commercial law via a law of proof:

> The law merchant [...] seems to have been rather a special law for mercantile transactions than a special law for merchants. It would we think have been found chiefly to consist of what would now be called rules of evidence, rules about the proof to be given of sales and other contracts, rules as to the legal value of the tally and the God's penny [...][1]

In 1915, Arthur Nussbaum stated that "commercial law is no longer a law of commerce, but just a collection of quite distinct materials."[2] A leading Finnish commercial lawyer has recently pointed out that many of his colleagues actually do things that have little to do with commercial law, by any definition, but rather with fields such as general contract law, labour law or competition law.[3] Even after almost 150 years of existence as an academic discipline, commercial law is still lacking a theory and identity.[4]

Theory and identity have everything to do with the creation of a discipline. This article seeks to place the birth of Finnish commercial law, with the help of comparative legal history, in an international context. Section two of the article delves into the different European models of

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[1] Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I:1* (Cambridge: Cambridge University Press, 1898), 467.
[2] Arthus Nussbaum, "Die Auflösung des Handelsrechtsbegriffs," *Zeitschrift für das gesamte Handelsrecht* 76 (1915).
[3] Petri Mäntysaari, "Kauppaoikeuden teoriasta," *Lakimies* 3 (2014), 347–367, 353.
[4] Jean Nicolas Druey, "The practitioner and the professor – is there a theory of commercial law?" in Michel Tison et al. (eds.), *Perspectives in Company Law and Financial Regulation: Essays in Honour of Eddy Wymeersch* (Cambridge: Cambridge University Press, 2009), 607–616; Holger Fleischer, "Gesellschafts- und Kapitalmarktrecht als wissenschaftliche Disziplin – Das Proprium der Rechtswissenschaft," in Christoph Engel – Wolfgang Schön (eds.), *Das Proprium der Rechtswissenschaft* (Tübingen: Mohr-Siebeck, 2007), 50–76.

understanding and systematizing norms applied to merchant relations in the early modern period. Section three deals with the nineteenth- and twentieth-century development of commercial law as an academic discipline, focusing in particular on nineteenth-century Finland and, for comparison, certain other European countries. The fourth and final section draws conclusions based on the findings presented in the article.

II. Commercial Law Scholarship in the Making: The Early Modern Period

Talking about commercial law as a branch of legal literature before the nineteenth century is, strictly speaking, anachronistic. Commercial law as a branch of law was a nineteenth-century invention – as was the whole systematization of law into modern disciplines – but the sources of commercial law cannot be properly understood if detached from its early roots.[5] To understand the different ways commercial law grew as a distinct discipline in different parts of the Western world in the nineteenth century, it is necessary to look deeper into its history. Despite the fact that northern Italy lost its leading position in European commerce after the Middle Ages, early modern Italian legal scholarship enormously influenced the development of commercial law in other parts of Europe. The best examples are Benvenuto Stracca (1509–1578; *De mercatura*, 1553), Sigismundo Scaccia (1564–1634; *Tractatus de commerciis et cambio*, 1618) and Casaregis (1670–1737; *Discursis legales et commercio*, 1707). Stracca in particular is known as a practitioner who for the first time presented the body of commercial law known as the law merchant in its entirety, combining a Romanist tradition originating in the Middle Ages with a profound knowledge of commercial and court practice. For Stracca, the law merchant was a combination of rules pertaining to merchants that did not include the norms pertaining to exchange.[6]

Special legal norms pertaining to commercial relations – legal arrangements concerning contractual relations affecting merchants, commercial enterprises, insurance matters, conflict resolution and regulation issues, and bankruptcy – emerged as different from other parts of the law, such as contract norms based on Roman law, in many Western European regions already in the early modern period. In other regions, general law pertaining to contracts and

[5] See Hilaire, 85.
[6] Hilaire, 65–66.

procedure continued governing mercantile situations.[7] Some of the norms that originally applied to merchant relations only now regulated all contractual relations. Examples abound. The good faith of the possessor of stolen goods was originally protected amongst market merchants only, but in the sixteenth century the rule came to be applied more generally in continental law.[8] This type of change in meanings was not particular to just commercial law. In the early modern period, many medieval legal concepts acquired new meaning. Suffice it to mention how dominium changed from a feudal term related to …..

In the Middle Ages, commercial law in Europe was institutionalized in two basic models. In the southern part of the continent (along the Iberian, Dalmatian and Adriatic coasts), merchant courts, in which merchants themselves served as judges, resolved commercial cases. In north-western Europe, commercial cases were tried in normal urban and princely courts, in which merchants' privileges often safeguarded them against seizure and arrest, or guaranteed them quicker proceedings. In the south, the merchants made the rules themselves, whereas in the north the urban or princely privileges were essential to shaping the *ius mercatorum.* Both in southern and northern Europe, the earliest forms of commercial law concerned the relationship between merchants and those involved in maritime transport. In the case of producers, transporters and merchants, exceptions were made to the general legal rules. It was also typical from early on that merchants were allowed to solve their cases via arbitrage procedure.[9]

Despite the fact that arbitration procedures were quite common, the early modern state gradually took increasing control over commerce and merchants' affairs. In the early modern period, European commercial courts appeared in three forms. The southern model of *consulados*, typical of Spain (Burgos 1494, Bilbao 1511, Seville 1543), was based on the relative independence of merchants, who chose to serve as judges in their courts, although often in conjunction with professional lawyers or experienced lay judges. However, the importance of political power-holders was great also here as regards both the founding of the consular courts as well as putting commercial customs into writing. In the northern model, such as practiced in the Netherlands or England, no special merchant courts emerged, although merchants could have a say in commercial adjudication. The successful French

[7] Dave De ruysscher, *Gediscplineerde vrijheid: Een geschiedenis van het handels- en economisch recht* (Antwerp: Maklu, 2014), 19.
[8] De ruysscher, 23.
[9] De ruysscher, 26–27, 30.

model, based on the commercial courts (*juridictions consulaires*) founded in the mid-seventeenth century, was a compromise between the southern and northern models. As in the case of Burgos, French merchants chose the judge from amongst themselves, but the commercial courts had jurisdiction only up to a certain value amount in the case. If the value exceeded that amount, the case fell under a royal court's jurisdiction. Researchers have pointed out the importance of state formation as one of the main reasons behind the difference between southern and eastern Europe. In the northern part of Europe, the strengthening modern state sought control over all forms of legal decision-making, commercial adjudication included.[10]

In recent years, historians – mainly economic historians – have intensely debated the interplay between commerce, state and urban institutions, and private ordering. In his study of Jewish merchants trading in the eleventh and twelfth centuries between Italy and the Maghrebi region of North Africa, Avril Greif underlined the importance of merchants' own cultural beliefs and social norms for arranging commerce independently of the influence of political rulers.[11] Jeremy Edwards and Sheilagh Ogilvy have questioned Greif's results, however, pointing out that the commercial transactions of the Maghrebi traders were in fact subject to formals rules enforceable by secular or religious courts.[12] To similar effect, scholars have also noted that medieval merchant guilds operating abroad always functioned with the license of their home government and their host abroad.[13] Oscar Gelderblom, in this study of late medieval and early modern Dutch cities, drew interesting conclusions that fall somewhere between these two positions. He claims that strong towns, such as Bruges, Antwerp and Amsterdam, developed flexible legal institutions able to accommodate foreign merchants and their commercial customs within the same local system.[14]

The discussion surrounding the material norms employed in commercial conflict resolution has been subject to debate as well. To put it briefly, the narrative of medieval *lex mercatoria*, with European merchants having a common law merchant in the Middle Ages and to an extent

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[10] De ruysscher, 34–35.
[11] Avner Greif, "Reputation and Coalitions in the Medieval Trade: Evidence on the Maghribi Traders," *Journal of Economic History* 4 (1989), 857–82.
[12] Jeremy Edwards and Sheilagh Ogilvie, "Contract Enforcement, Institutions and Social Capital: The Maghrebi Traders Reappraised," *Economic History Review* 65 (2012), 421–44.
[13] Oscar Gelderblom and Regina Grafe, "The Rise, Persistence, and Decline of Merchant Guilds: Re-thinking the Comparative Study of Commercial Institutions in Pre-modern Europe," *Journal of Interdisciplinary History* 40 (2010), 477–511, 487–493.
[14] Oscar Gelderblom, *Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton: Princeton University Press, 2013).

in the early modern period also, became popular after Lewin Goldschmidt had invented it in the 1880s. The idea of *lex mercatoria* received a strong boost in 1983, when Harold Berman adapted it for his influential *Law and Revolution.* Subsequently, legal historians have gradually dismantled the theory and demonstrated that a common law merchant never existed for all of Europe, neither in a procedural nor in a substantive meaning of the term.

How did Swedish (and Finnish) law of the early modern period relate to the European histories of commercial law? Was there something that could be called commercial law in early modern Sweden? As I have explained elsewhere,[15] special rules governing relations between merchants had begun to be codified in the Middle Ages, and in the city laws of Birka and Wisby, which included large provisions regarding maritime commercial law. The Town Law of King Magnus Eriksson of 1352 was based on a similar idea: as part of a comprehensive code of law, it also included rules concerning the commercial activities of town-dwellers. Obviously, their needs differed from those of rural people, who could get by with general rules of private law, applicable to all situations of life.[16]

A commercial regulation applying to the whole realm had gradually emerged by the seventeenth century. Norms and regulations, which later became commercial law, pertained mostly to two branches of regulation. First, a vast regulatory framework necessary for mercantilist policies was part of "cameral" or "police" regulation.[17] Second, a large number of special rules on private law for merchants were categorized under maritime law. Maritime transportation, maritime insurance, and maritime corporations had little to do with the legal needs of other merchants operating domestically. In Sweden, no sensible entity such as a law common to all merchants existed. Most of Sweden's international commerce was done by sea, whereas simple domestic commerce could function quite well with general rules of private law.

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[15] Heikki Pihlajamäki, "The Birth of Commercial Law in Early Modern Sweden: Sources and Historiography," in Heikki Pihlajamäki, Albrecht Cordes, Serge Dauchy, Dave De ruysscher (eds.), *Understanding the Sources of Commercial Law* (to be published by Brill).

[16] See James Reddie, *An Historical View of the Law of Maritime Commerce* (Edinburgh and London: William Blackwood and Sons, 1842), 391–392. Reddie's study is a work of comparative legal history, which traces the development of maritime commercial law in many jurisdictions, including Rome, Sweden, England and Denmark. It belongs to the same genre as the first wave of comparative legal history studies, or "universal legal histories" (*Universalrechtsgeschichte*), which emerged in the first part of the nineteenth century and include Eduard Gans's *Das Erbrecht in weltgeschichtlicher Entwicklung* (1824–35) and, for instance, Karl Mittermaier's many articles on criminal and procedural laws.

[17] For more on these regulations, see Toomas Kotkas, *Royal Police Ordinances in Early Modern Sweden: The Emergence of Voluntaristic Understanding of Law* (Brill: Leiden, 2014), 59–68, 131–150.

Legal literature, however, was scarce in all fields, and even fewer authors concerned themselves with commercial questions. One of the few who did, Johannes Loccenius, who was of German origin, touched upon them in his *De iure maritime & navali* (1652), which contained chapters on maritime insurance, transportation contracts and companies and one on procedural questions regarding litigation arising from maritime contracts and commercial contracts. Loccenius referred to German, Dutch and other European sources, such as Pedro de Santarem's (Pedro Santerna Lusitano) *Tractatus de assecurationes*, Hugo Grotius and Vinnius, as well as to the Amsterdam and Antwerp statutes.[18] Maritime law of the early modern period included everything having to do with seafaring, which, in other words, was subject to the systematizing principle. Some of the rules included in the maritime law of Loccenius were of a kind that had no direct connection to merchants or commerce, such as maritime defence, privileges pertaining to shipbuilding, freedom of navigation, shipwrecks and fishing rights, as well as extensive sections dedicated to piracy (II:3), navigational security, property rights to ship, hereditary rights to ship, delicts and procedure.[19] Some of the subjects were closely related to commercial activities. These subjects included staple rights (I:X) and rights pertaining to bottomry (*foenus nauticum*), jettison (*iactus*), contribution (*contributio*) and contracts and other obligations. Thus, Loccenius went through the whole legal system from the point of view seafaring, and commercial activities were only part of the larger picture. The same can be said of Jacob Albrekt Flintberg's (1751–1804) approach. His *Anmärkningar till Sveriges rikes sjölag* concerned only maritime law, although the work included an introduction to bankruptcy procedure as well.[20]

In general terms, David Nehrman (1695–1769) was even more important because his work encompassed the earlier seventeenth-century developments in all major fields of law and his studies continued to dominate the field until almost the start of the nineteenth century. In his *Inledning til then Swenska Jurisprudentiam Civilem* of 1729 (Introduction to Swedish Civil Law), Nehrman explained the Swedish system of company law – which was equal to *societas.*[21] Otherwise, Nehrman did not touch upon commercial matters. This lack of interest on Nehrman's part is quite telling of the fact that domestic commerce did well within the general rules of contract law and

[18] Johannes Loccenius, *De iure maritime & navali* (Stockholm, 1652), 18, 22, 29, 52, 55, 57, among others.
[19] Johannes Loccenius, *De iure maritime & navali libri tres* (Stockholm, 1652).
[20] Jacob Albrekt Flintberg, *Anmärkningar till Sweriges rikes sjö-lag* (Stockholm, 1794).
[21] David Nehrman, *Inledning til then Swenska Jurisprudentiam Civilem* (Lund: Ludwig Decreaux, 1729), 210–229.

there was very little need for any special commercial law as such.[22] As far as foreign commerce was concerned, commercial law was part of maritime law, which included many kinds of legal norms other than just the law merchant. This was the situation when commercial law as a modern discipline started to emerge in the nineteenth century.

To sum up so far: commercial regulations developed in Sweden already in the Middle Ages, and some seventeenth- and eighteenth-century Swedish authors showed interest in commercial matters. However, it would be an exaggeration to speak of Swedish commercial law as an academic specialization in any sense of the word in the early modern period.

III. Creating Commercial Law as a Modern Legal Discipline: Europe, Sweden, Finland

When can we talk about a distinct legal discipline in the modern sense of the word? Clearly, it would at least be when three prerequisites have been fulfilled. First, a discipline needs to have people who specialize in the subject and identify with it, usually by giving it a name: "environmental law", "labour law", or "commercial law". Second, at the next stage a discipline will typically become institutionalized. It will have professorial chairs, learned societies and eventually journals. It will be taught as a separate subject at universities. Third, if we are dealing with continental law, it will also have a "general theory", or rules that are common to the whole field.

I will start with the first prerequisite, specialization and identification. In the seventeenth and eighteenth centuries, as mentioned already, commercial law as a separate entity did not exist in Sweden. Instead, rules pertaining to commerce were categorized under "police", the legal nature of which was not quite clear in the first place, or under maritime law, the significance of which was clear enough for the northern state.

This was the situation when Sweden lost its eastern half, Finland, to the Russian Empire in 1809 as a result of the Napoleonic Wars. During the second half of the nineteenth century, the

[22] See also Palmgren, Gunnar "Utvecklingen av Finlands handelsrättsliga lagstiftning," in *Vårt näringsliv och kriget. Spridda studier --- tillägnade professor J. V. Tallqvist* (Helsinki, 1944), 113–125.

economic and political situation described above, which Finland had shared with its former mother country, Sweden, began to change. However, these changes effected no fundamental changes in the law until the latter half of the century – neither in Finland nor in Sweden.[23] We now turn our attention to Finland. The police as a legal category was being dismantled, and the rules that had thitherto comprised it had to find new homes in the emerging modern branches of law. A wave of liberalization swept through Finland. The legal reforms started in 1856, when the liberal-minded Czar Alexander II, presented a programme of social and economic reforms during his visit to the Grand Duchy. The Emperor demanded the adoption of three measures: 1) the developing industries needed a functioning infrastructure of railways, roads and channels; 2) the living conditions of the rural poor needed to be improved; and 3) economic legislation needed liberalization.[24] When the Diet (the Grand Duchy's legislative body) reconvened in 1862, after a recess of more than half a century, a list of the most urgent measures was immediately drawn up and the reforms carried out on a piece-by-piece basis throughout the 1860s and 1870s. Freedom of contract saw the light of day through a series of legislative acts (Hirelings Act 1865, Industry Act 1868, Marriage Act 1868). The sphere of legally competent persons widened, and the predictability of exchange increased through the Mortgage Act (1868), Warranty Act (1868) and Prescription Act (1873). To make the accumulation of capital possible, new banking laws and company legislation were needed (Private Banks Act 1866, Act on Limited Companies 1864). Freedom of industry became more or less the rule, after several partial reforms, through the Industry Act of 1879.[25]

Works on legal themes, which later came to form part of commercial law, started to appear in Sweden and Finland, and modern legal scholarship, following the German models of the historical school and conceptual jurisprudence, was born in the last decades of the nineteenth century. Examples include J. N. Lang's work on historical-comparative patent law (1880)[26] and K. H. L. Hammarskjöld's study on Swedish transportation law (1886).[27] Both works were clearly inspired by the practical needs of developing business life in both countries. Lang

[23] See Jussi Sallila's article on J. J. Nordström in this volume. Nordström was originally a Finnish legal scholar who spent the latter part of his career in Sweden.
[24] Jukka Kekkonen, *Suomalaisen oikeuskulttuurin suuri linja* (Helsinki: Suomalainen Lakimiesyhdistys, 1998), 120.
[25] See Kekkonen, 28–29.
[26] J. N. Lang, *Om grunderna for uppfinnareskydd genom lag* (Helsinki: Frenckell, 1880). Lang (1847–1905) was professor of economic law and economics at the University of Helsinki. His main work was *Finlands sjörätt* [Finnish maritime law] (Helsinki: WSOY, 1890).
[27] K. H. L. Hammarskjöld, *Om fraktaftalet och dess viktigaste rättsföljder* (Uppsala: Almqvist & Wiksell, 1886).

described how the breakdown of the *ancient regime* with its system of privileges contributed to a growing need to protect innovation. The author confirmed the connection between the degree of industrialization and the need for protection through copyright law: "Precisely those countries, which have been the first to recognize the law of copyright, namely England, North America, France, and Belgium, are also the leaders of industrial development."[28] Although it was thus the most industrialized nations that also needed copyright and patent law the most, such institutions were not unnecessary in Finland either, despite its much lower degree of industrialization. Patent law was needed not only for reasons of national economy and in order to encourage innovation, but also to protect the nation's honour: Finland, of course, should not be a "parasite plant, which earned its main income by exploiting what the innovative spirit and industriousness of other nations had created."[29] Neither of these authors was concerned, however, with copyright law or transportation law a as part of anything resembling commercial law, although Hammarskjöld at some length describes the solutions found in the commercial codes of other countries.[30]

A couple of decades later, enthusiasm for commercial law was already up in the air. George Granfelt began his work on current account (Ital. *conto corrente*) as a legal institution in a somewhat passionate manner. It was, "[i]n our days […] especially commercial law," which was "prepared […] to follow the quick progress of the economy pulsating lively." Granfelt saw, nevertheless, commercial law not as a fully separate branch of law, but as an "intermediary station" ("*mellanstation*") between customary law and general civil law. Elsewhere, commercial law was an "experimental field, a platform for new findings," and it did not exist in Finland. Legal innovations had been introduced in Finnish commercial practice as well, but not enough to warrant a whole new field of commercial law: "[…] also in our country the business life demonstrates a capability of creating legal institutions, which with increasing pressure knock on the closed door [of general civil law]."[31] Granfelt wrote large articles on other aspects of commercial law as well, such as security contracts and transportation law.[32]

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[28] Lang, 108. "Just de länder, som tidigast erkänt uppfinnarerätten, nemligen England, Nordamerika, Frankrike och Belgien befinna sig äfven i den industriela utvecklingens spets."
[29] Lang, 170. " … likasom en parasitvext som hemta sin hufvudsakliga näring af hvad uppfinningsanden och näringsfliten hos andra nationer skapat."
[30] Hammarskjöld, 165–172.
[31] "Icke förty visar sig näringslifvet äfven hos oss mäktigt att skapa rättsinstitut, som med dag för dag alt större eftertryck klappa på den stängda porten […]). G. Granfelt, *Om kontokurranten* (Helsinki: Helsingfors Centraltryckeri, 1899), 1–2.
[32] "Om Spedition," *Tidskrift utgifven av Juridiska Föreningen i Finland* 1905, 136–222; "Om försäkringsaftalets uppkomst och utveckling," *Tidskrift utgifven av Juridiska Föreningen i Finland* 1908, 1–112.

In Finland, the first legal scholar who clearly started specializing in commercial law and identifying with it was Lauri Cederberg (1881–1943). In 1924, Cederberg became the first professor of commercial law in Finland, and in fact the chair was the first of its kind in the Nordic countries. The funding of the chair came from Alfred Kordelin, an important entrepreneur, who had donated the funds in his will.[33] This was a time of growing interest in the economic development of the new Finnish nation. Economic education was held in newfound esteem, the best example of which being the founding of the Helsinki University of Economics in 1911. Åbo Akademi University, the only exclusively Swedish-language university in Finland, was founded in 1918, and from the start a chair in "commercial, industrial, and social law" was created there.[34]

One of the first tasks for the new professor was to define the field of commercial law. Having studied in Bonn and Berlin, Cederberg was well aware of the latest trends. He had already addressed the question in his writings of whether commercial law should be codified. Cederberg did not think that it should, although it was clear that both the Finnish law of obligations and commerce were in desperate need of reform. The partial statutory reforms that had subsequently been made to patch up the provisions of the Swedish Law of the Realm of 1734 were not satisfactory. A reform was, or so thought Cederberg, clearly in the interests of Finnish commerce. However, Cederberg thought that Finnish commercial law was not yet at a stage in which it could be codified. Commercial law had simply not been sufficiently worked out in existing scholarship. A codification put into effect too soon, therefore, would necessarily need to be overly based on foreign models and would run the risk of losing touch with the Finnish legal system. [35]

Interestingly, Cederberg used comparative legal history to argue that in most cases, commercial law had been separated from the rest of civil law not so much for "legal" reasons as for purely historical reasons. French commercial law was codified in the Napoleonic series of codes of 1808, but, as Cederberg correctly remarked, the roots of such codification lay firmly in the commercial ordinances of Louis XIV between the years 1673 and 1681. Because of the Napoleonic conquests, the model of separate commercial law spread to Belgium,

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[33] Mia Sundström, "Lauri Cederberg," in *Kansallisbiografia*; Pirkko-Liisa Haarmann, "Cederbergin kauppaoikeus - yhäkö pätevä?," *Lakimies* 7–8 (2012), 1143–1152.
[34] However, the first chair holder, A. W. Gadolin, managed to change the name of the professorship to that of "private law and general jurisprudence."
[35] Lauri Cederberg, *Näkökohtia Suomen velvoite- ja kauppaoikeuden kodifioimiskysymyksessä* (Helsinki: Valtioneuvoston kirjapaino, 1919), 12, 41–42.

Luxemburg, Greece, Turkey and Serbia, among other places. The influence of the French commercial code explained the separation of commercial law in Spain and Portugal as well, and the Spanish legal influence in turn in many "non-European" countries. The lack of political unity likewise accounted for separate commercial law in Germany: if anywhere, it was possible to achieve agreement in the field of commercial law.[36] Finland's situation was different, though, because Finnish commercial law was not yet as developed as elsewhere. Instead of aiming for a codification of commercial law, Finnish authorities aimed for partial reforms and Scandinavian cooperation. Similarly, and again on comparative grounds, Cederberg argued that separate commercial courts were not the solution for Finland.[37]

Cederberg was in favour of codifying the Finnish law of obligations – although not all of civil law – and he thought that commercial law should be included in the code. This, however, did not lead him to the conclusion that commercial law could not exist as a separate system (and thus, a branch of law). Cederberg, writing in 1925, had read his German authorities and quoted Lewin Goldschmidt, according to whom even an uncodified commercial law could be "just as extensive and even more extensive than an uncodified one."[38] The essence of mercantile activity was the constant need to draw up contracts, in contrast to, for instance farmers, who only occasionally prepared such a contract. The "severity of commercial law" ("*die Strenge des Handelsrechts*") meant that the merchant was judged more severely than were ordinary people when informing his commercial partners. They were to perform their contractual duties more carefully than ordinary persons, which showed, for instance, in that even a slight delay in performing one's duties could lead to the dissolution of a contract. The swiftness of commerce demanded that the rules of commercial law be detailed, clear and easy to interpret. On the other hand, a certain amount of flexibility was also needed. A host of special norms regarding commercial relations – such as those concerning copyright, companies and insurances – called for a separation of commercial law from private law. Referring to Jakob Friedrich Behrend, Cederberg distinguished commercial law from general civil law in that commercial law was, by its very nature, transnational. Whereas civil law was always attached to a particular state, every institution of law merchant was at the same time an institution of global law (*Weltrechtsinsitutut*).[39]

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[36] Cederberg 1919, 44–45.
[37] Lauri Cederberg, "Tarvitaanko Suomessa erikoissäännöksiä kauppa-asioiden prosessuaalisesta käsittelystä,"
[38] Lauri Cederberg, *Kauppaoikeuden suhde muuhun siviilioikeuteen* (Porvoo: WSOY 1925).
[39] Cederberg 1925, 8–9. See Jakob Friedrich Behrend, *Lehrbuch des Handelsrechts* (Berlin Guttentag, 1886), 12.

Cederberg rejected, however, Lewin Goldschmidt's theory of commercial law. According to Goldschmidt, commercial law dealt with transactions that mediated the transfer of goods from producers to consumers. However, and here Cederberg follows Wieland, many institutions of commercial law had little or nothing to do with mediating goods – such as rules regarding the publishing of real estate conveyance books or the right to pursue a trade. Philipp Heck's ideas suited Cederberg better. According to the father of the "Jurisprudence of Interests" (*Interessenjurisprudenz*),[40] commercial law was a law of large companies ("*das Recht des rechtsgeschäftlichen Massenbetriebs*"). The distinctive feature of commercial was that it regulated "several, repetitive, and mutually dependant legal transactions." For Heck, these mass relations had become the norm determining the legal content of commercial dealings whenever the parties had not specifically agreed otherwise. Limited companies were needed to handle the risks necessarily involved in mass transactions.[41]

Unquestionably, Heck was a modern legal scholar. He did not believe in the historical explanations given for commercial law, but departed in terms of more modern understandings of commercial law. He had inherited this perspective from Rudolph von Ihering, who had completely discredited the historical legitimation of law and instead highlighted the functional consequences of law and legal decisions.[42]

For Heck, the *Massenbetrieb*, or large company, was the decisive modern phenomenon, which explained and legitimized the need for commercial law. It was clear to him that commercial enterprises were "entangled in completely different kinds of numerous and complex legal relations than a hundred years ago."[43] Private legal relations were the relations that held modern society together: they were "the bonds that, as the division of labour advanced, kept the private economic elements of the social construction together."[44] As culture advanced, the uses of commercial law expanded.[45]

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[40] On Heck, see Ulrich Falk, "Heck, Phlipp, 1858–1943" in Michael Stolleis (ed.), *Juristen: ein biographisches Lexikon* (München: Beck, 1995), 275.
[41] Philipp Heck, "Weshalb besteht ein von dem bürgerlichen Rechte gesondertes Handelsprivatrecht?" *Archiv für civilistischen Praxis* 92 (1902), 438–466.
[42] Rudolph von Ihering, *Der Zweck im Recht* (Leipzig: Breitkopf & Härtel, 1887).
[43] "Es bedarf nicht der näheren Ausführung, dass heute ganz anderen Kreise der Gewerbetreibenden in zahlreiche und komplizierte Rechtsbeziehung verstrikt sind, als vor 100 Jahren." Heck, 464.
[44] "Privatrechtlichte Rechtsgeschäfte und aus ihnen hervorgehende Rechtsbeziehungen sind ja die Bande, durch welche bei fortgeschrittener Arbeitstheilung die privatwirtschaftlichen Elemente des sozialen Baus zusammengehalten werden."
[45] "Deshalb wird die vertretene Deutung des Handelsrechts dadurch bestätigt, dass ihr Anwendungsgewicht bei fortschreitender Cultur sich ausdehnt."

The growth of commerce was the obvious feature behind large-scale commerce, but it was much more as well. Division of labour characterized the modern commercial world as well: If private law in general had become more commercial in nature – which was generally acknowledged at the time – this did not render commercial law useless. On the contrary, the growing number of commercial enterprises gave rise to constantly new situations requiring legal regulations. This was the case not only domestically, but even more so internationally. The need to develop commercial law was "especially intensive" because of the expansion of the law of bills of exchange, i.e. the law of sea and land transport. Large businesses were, according to Heck, suffered most as a result of inadequate national legal orders. Heck saw national insularity as a problem, and the (at least potentially) international nature of commercial law as a future promise and his field of law in particular as a "pioneer of progress" ("*Pionier des Fortschritts*").[46]

Heck did not feel the need to justify with examples his claims regarding the needs of commercial life. The huge changes that the German economic structure had experienced in the last couple of decades were obvious enough. Businesses had grown immensely. In 1882, 26% of those employed in crafts and other industries worked in plants with more than 50 employees. In 1907, 45% of all workers did so. Whereas in 1882, 7% worked in businesses with over a 1000 employees, 14% did so in the year 1907. Some industries were more concentrated than others, with mining, engineering and textile and chemical industries leading the way. Already since the eighteenth century, factory entrepreneurs (unlike artisans) had been considered merchants by law, and therefore they were obliged to submit their annual inventories and profit-and-loss accounts and to organize their bookkeeping according to the legal requirements for merchants. By the early twentieth century, producers had also increasingly taken over both the domestic and export trading of their products: electrical and chemical industries are typical examples as well as the sewing machine and bicycle industries.[47]

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[46] Heck, 466.

[47] Jürgen Kocka, "Entrepreneurs and Managers in German Industrialization," in *The Cambridge Economic History of Europe: VII: The Industrial Economies: Capital, Labour, and Enterprise* (Cambridge: Cambridge University Press), 492–589, 544, 556, 562. See also Jürgen Kocka – Hannes Siegrist, "Die hundert größten deutschen Industrieunternehmen im späten 19. und frühen 20. Jahrhundert: Expansion, Diversifikation und Integration im internationalen Vergleich, " in Norbert Horn – Jürgen Kocka (eds.), *Recht und Entwicklung der Großunternehmen im 19. und frühen 20. Jahrhundert: Wirtschafts-, sozial und rechtshistorische Untersuchungen im Deutschland, Frankreich, England und den USA* (Göttingen: Vandenchoeck & Ruprecht, 1979), 55–117, 79–84.

Heck's emphasis on the international nature of commercial law stood in clear contrast with the efforts to codify commercial law. France had codified commercial law in 1808 and Germany already during the *Deutscher Bund* in 1861, and again as one of the first legal measures after unification in 1871 as well as in 1897. If commercial law was to be developed as an international endeavour, how could it be codified? Cederberg took up the question of codification as well. In the Nordic countries, the codification of civil law had been debated since the 1820s. The mighty Napoleonic civil code stood in the background, and the international codification trends and discussions could not be ignored in Scandinavia either. Because of Finland's annexation to imperial Russia as a result of the Napoleonic Wars, the question of codification received a different colouring in Finland. In the 1820s, Russia entered into a process of codifying its laws, and the project included all parts of the Empire. Finland was no exception. Yet leading Finnish jurists – on whose help Russians absolutely depended – refused to cooperate. This was because they feared that the codification process would not stop short of collecting and modernizing all Finnish laws that been issued after the promulgation of the Swedish Law of the Realm of 1734; they feared that the codification process would bring with it a Russification of the Grand Duchy's laws. In both Sweden and Finland, codification as an issue had more or less died out by the mid-nineteenth century, and legal scholars assumed the leading role in modernizing laws according to foreign, mostly German, models.[48]

Cederberg voiced sympathy for the idea of a limited codification with respect to the law of obligation, the planning of which had already been undertaken as a common Nordic project. Cederberg, after carefully weighing the pros and cons, assumed a positive attitude towards a common commercial code. However, he did not think that Finnish commercial law was yet, at the time of his writing, ripe for codification. This was his view even though he thought that, in principle, commercial law should not be viewed as separate from private law.[49] Here, Cederberg's views changed when he assumed the Chair of Commercial Law at the University of Helsinki. In 1925, Cederberg still thought that as far as statutory law was concerned, the

[48] Elsewhere, I have explained the reasons for why the Nordic countries never codified their civil laws. See Heikki Pihlajamäk, "Private Law Codification, Modernization and Nationalism: A View from Critical Legal History," *Critical Analysis of Law* 2:1 (2015), 135–152. The law of obligations was issued inh 1928 (*Oikeustoimilaki*).
[49] Lauri Cederberg, *Näkökohtia Suomen velvoite- ja kauppaoikeuden kodifioimiskysymyksessä* (Helsinki: Valtioneuvoston kirjapaino, 1919). Here, Cederberg followed the solution adopted in the Swiss Civil Code of 1883, which did not distinguish between general private law and commercial law (*Einheitsgesetzgebung*); Ansgar Becker, *Die Entwicklung des Kaufmannsbegriffs im Sinne eines übergeordneten Abgrenzungskriteriums für den persönlichen Anwendungsbereich handelsrechtlihcher Vorschriften* (Münster: LIT, 2004), 104.

unity of commercial and private law should be maintained. From this perspective, it did not follow, "of course," that commercial law should not be treated as a separate system in legal scholarship.[50]

The reason for this argument is clear and it is similar to Heck's argument regarding the international nature of commercial law. For Cederberg, however, internationalization was directed towards the neighbouring Nordic countries. Otherwise, he was not extremely enthusiastic about the international dimension of commercial law. A danger existed, wrote Cederberg, that if unification were to be successful at the level of statutory law, legal practice would nevertheless turn out quite differently. This would be the case because no international judicial authority existed to level out the differences.[51]

Cederberg criticized Heck for his concept of *Massenbetrieb*, which could not capture the phenomenon of commercial law adequately. Instead, Cederberg wished to base his concept of commercial law on the concept of enterprise (*företag, yritys, Betrieb*). This conception of commercial law had already by Cederberg's time rather deep roots in German legal scholarship. Wilhelm Endemann, in his *Das Deutsche Handelsrecht* of 1865, had already departed from this concept, though.[52] Julius von Gierke, Heinrich Lehmann[53] and Karl Wieland[54] continued the same tradition.[55] As Schmoeckel has remarked, one advantage of building commercial law around the concept of an enterprise was that it made it possible to take aspects of labour law into consideration.[56] It was also obvious from the point of view of a Finnish legal scholar like Cederberg that such an understanding fit the Finnish economic reality much better than did the concept of a large enterprise – which did not at all dominate the Finnish economic scene in the early twentieth century.

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[50] Cederberg 1925, 3.
[51] Cederberg 1919, 34.
[52] Wilhelm Endemann, *Das Deutsche Handelsrecht: systematisch dargestellt*, *Erste Atbtheilung* (Heidelberg, 1865), 74.
[53] Heinrich Lehmann, "Grundlinien des deutschen Industrierechts," in *Festschrift für Ernst Zitelmann* (München, 1913), 1–46.
[54] Karl Wieland, *Handelsrecht, Erster Band: Das kaufmännische Unternehmen und die Handelsgesellschaften* (Leipzig, 1921).
[55] The history has been summarized in many works. See, for instance, Knut Wolfgang Nörr, "Das Unternehmen in der Wirtschafts- und Rechtsordnung 1880 bi 1930: ein Beitrag zur Morfologie der organisierten Wirtschaft, in Helmut Coing et al. (eds.), *Staat und Unternehmen aus der Sicht des Rechts* (Tübingen: Mohr-Siebeck, 1994); Gerhard Dilcher – Rudi Lauda, "Das Unternehmen als Gegenstand und Anknüpfungspunkt rechtlicher Regelungen in Deutschland 1860-1920" in Norbert Horn – Jürgen Kocka (eds.), *Recht und Unternehmen im 19. und frühen 20. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1979), 535–576; Mathias Schmoeckel, *Rechtsgeschichte der Wirtschaft seit dem 19. Jahrhundert* (Tübingen: Mohr-Siebeck, 2008), 116.
[56] Schmoeckel, 117.

Roughly at the same time, that is, in the decades preceding the First World War, the Finnish economy grew quite quickly. Between the years 1860 and 1913, the number of those working in the industrial and handicraft sector grew almost five-fold, from 31 000 to 148 000. As the population grew 1.7 times larger, the proportion of industrial and handicraft workers as a percentage of the whole working force grew from 4% in 1860 to 10% in 1910. The growth in the years 1890–1910 was especially vigorous. Although the rise was significant, Finland was still in 1910 a remarkably agrarian country.[57] This was certainly the case in relation to Germany, but the agrarian nature of the Finnish economy was clear in relation to Denmark, Norway and Sweden, too.[58] Finland's economy was different from both that of Germany and the other Scandinavian countries in that Finnish industrialization depended predominantly on a single industry, the sawmill industry, and its derivatives.[59]

A "user's perspective" to commercial law involves the need to consider law firms as well. They acted as important intermediaries between a law consisting of abstract norms and legal scholarship on the one hand, and the practical life of commerce on the other. Some lawyers began to specialize in providing counseling services to commercial enterprises from the 1860s onwards, and the first law firms specializing in commercial law appeared in Helsinki in the following decades. Of these firms, Castrén & Snellman (1888) and Dittmar & Indrenius (1899) still exist.[60] In fact, advocacy as a full-time profession emerged in part because of the drastic economic changes of the late nineteenth century. Modern advocacy and modern commercial law were in demand because of the rapid legislative reforms enacted in the Grand Duchy in the 1860s and 1870s. Traditional domestic commerce had not required specialized legal help of any kind. The normative framework had been simple, and if legal problems occurred, they could most likely be solved without the expertise of legal professionals. The situation was rapidly changing towards the late nineteenth century, however. Enterprises engaged in international commerce needed to prepare themselves proactively, put their

[57] Viljo Rasila, "Ensimmäinen teollistumiskausi," in Jorma Ahvenainen, Erkki Pihkala, Viljo Rasila (eds.), *Suomen taloushistoria 2: teollistuva Suomi* (Helsinki:Tammi, 1982), 11–171, 55; Antti Kuusterä – Juha Tarkka, *Bank of Finland 200 years I: Imperial cashier to central bank* (Helsinki: Otava, 2011), 313–319.
[58] K.-G. Hildebrand, "Labour and Capital in the Scandinavian Countries in the Nineteenth and Twentieth Centuries," in *The Cambridge Economic History of Europe: VII: The Industrial Economies: Capital, Labour, and Enterprise* (Cambridge: Cambridge University Press), 590–628, 624.
[59] Hildebrand, 624; Rasila, 88.
[60] See, Heikki Pihlajamäki, *Kansan ja esivallan välissä: suomalaisen asianajajakunnan historia* (Helsinki: Suomen Asianajajaliitto, 2009), 106.

contractual framework in order and make sure their apparatus corresponded to the exigencies of modern law.

The law firms operated, furthermore, within a growing network of economic operators, the increasing activity of which is shown in the way these non-legal economic operators organized themselves at the national level. The Finnish Organization of Creditors (Suomen Luotonantajayhdistys - Finska Kreditgivareföreningen) was founded in 1905, the Finnish Association of Forwarding Agents (Suomen Speditööriyhdistys - Finska Speditörföreningen) in 1906, the Helsinki Association of Commercial Agents (Helsingin Agenttiyhdistys - Helsingfors Agentförening) in 1911 and the Helsinki Stock Exchange in 1912.

IV. Conclusion: centres, peripheries, transplants and importers

When trying to come to grips with the differences between societies, comparative social scientists and historians have long employed the terms centre and periphery – usually in order to highlight the Western world's superiority as compared to other parts of the world. The theoretical development of such a perspective began, however, only in the 1970s when social and political historians assumed a critical stance towards the Western countries as the self-evident centre of global development. The abuse of those living in colonized parts of the world by the Western powers became a self-evident part of these discussions. Immanuel Wallerstein's "world system" became the best-known example of the practical uses of the concepts centre and periphery.[61]

In the theory of comparative law or legal history, the concepts have not been developed much at all. (A widely read article by Douglas Osler talks about similar things, though, without employing the terminology.[62]) Traditional European legal history, from Wieacker to Bellomo, has really been interested in the "centre" only, if it is defined as the traditional core area of *ius commune*: Italy, France, Germany and the Netherlands. As Osler explains, each of these regions have their periods of prominence in the traditional story, though otherwise remaining in the margins. Thus, Italy predominated during the Middle Ages, France during the period of

[61] T. C. Champion (ed.), *Centre and Periphery: Comparative Studies in Archaeology* (London: Routledge), 2–9.
[62] Douglas Osler, "The Myth of European Legal History," *Rechtshistorisches Journal* 16, 393–410.

humanism, followed by the Netherlands and then Germany in the nineteenth century. The rest of Europe barely existed at all during the periods in question, at least not the Nordic countries.

In recent works by Nordic legal historians, the Nordic region often figures as a periphery in relation to the centre. It is the centre that provides the influences, while the periphery adapts to them. My own work on Finnish evidence law in the nineteenth century, Elsa Trolle Önnerfor's study of early modern Swedish law in wills, and Mia Korpiola's book on early modern Swedish marriage laws provide examples of this dynamic.[63] All of these works show how ideas originally produced in the centre are transferred to the periphery. However, the reception is not passive. The legal transplants or objects of reception – the terminology is endless – change during the process of transference, and the product may sometimes look quite different than it did at the starting point.

Sometimes the comparative constellations are more complex than in the three cases mentioned above. My recent book on law in the seventeenth century is a case in point. In Livonia, conquered by the Swedes in the 1620s, Livonian law was clearly peripheral in relation to the *gemeines Recht*, the German version of the *ius commune*, but it is much more difficult to determine whether it was peripheral in relation to Swedish law as well. A complex set of legal, cultural and political factors became intermingled in this instance.[64]

It is thus worthwhile to keep in mind that the division into centres and peripheries is not fixed once and for all. There may be cases in which one region is peripheral in relation to another in a certain respect, but central insofar as other issues are considered. Returning to the problem of commercial law, and allowing for the reservations expressed above, German nineteenth-century legal scholarship can well be regarded as representing the centre, the scholarly products of which were copied not only in Finland but in other parts of the world as well. In this respect, Finland was a periphery not a centre because the influences moved from Germany to Finland, and never vice versa.

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[63] Heikki Pihlajamäki, *Evidence, Crime, and the Legal Professsion: The Emergence of Free Evaluation of Evidence in Nineteenth-Century Finland* (Lund: Institutet för rättshistorisk forskning, 1997); Mia Korpiola, *Between Betrothal and Bedding: Between Betrothal and Bedding* (Leuven: Brill, 2009); Elsa Trolle Önnerfors, *Justitia et prudentia: Rättsbildning genom tillämpning, Svea hovrätt och testamentsmålen 1640–1690* (Stockholm: Institutet för rättshistorisk forskning, 2014).

[64] See Heikki Pihlajamäki, *Conquest and the Law in Swedish Livonia (ca. 1630–1710): A Case of Legal Pluralism in Early Modern Europe* (Leuven: Brill, 2017).

Cederberg's opinions regarding commercial law, however, did not develop in a vacuum. The practical needs for commercial law had developed during the preceding decades, as the Finnish commercial scene experienced tremendous changes beginning in the 1880s. A new legal framework was needed. Cederberg, as the main importer of the modern doctrine of commercial law to Finland, did not primarily turn to Sweden, which at later stages of Finnish history became a major source of influence for Finnish scholars. In Cederberg's time, Swedish scholarship on commercial law still did not offer much of a framework. Thus, Cederberg turned his attention to Germany since it was at the forefront of global legal scholarship at that time. He did not, however, adopt the German teachings passively. Instead, as importers of legal doctrines always do, Cederberg weighed the various different possibilities offered by the globally supreme German legal doctrine. He read widely, picking and choosing as he did so, and then applied his readings to Finnish circumstances. In doing so, he acted much in the same way that other successful importers of legal doctrines had done previously – and were doing precisely at the same time as Cederberg was engaged in constructing the foundations of Finnish scholarship on commercial law. [65]

[65] For an early example of an importer of legal ideas, see my article on Olaus Petri, the principal Swedish theologian and legal thinker of the sixteenth century; Heikki Pihlajamäki, "Gründer, Bewahrer oder Vermittler? Die nationalen und internationalen Elemente im Rechtsdenken des Olaus Petri," in Jörn Eckert & Kjell Å. Modéer (ed.), *Juristische Fakultäten und Juristenausbildung im Ostseeraum* (Stockholm: Institutet för rättshistorisk forskning, 2004), 29–38. For an example from the modern period and the introduction of German public law doctrines to Finland, see Heikki Pihlajamäki, "Translating German Administrative Law: The Case of Finland," *Rechtsgeschichte* 19 (2011), 267–277.